IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1719 OF 2002
IN
SUIT NO.3901 OF 1991

Bharti Mukund Shah of Mumbai
Indian Inhabitant, Residing at
111,Mount Unique, 14th floor,
62-D, Peddar Road, Bombay-400 026. ...Plaintiff
Vs.
M/s. Sindhwa Developers, a firm
Having its office at Balram Apartment,
Shimpoli Cross Road, Borivili
Mumbai 500 092. ...Defendant
And
Shree Chand Lunia of Mumbai
Adult, Indian Inhabitant,
Residing at 2B, Shantivan
Raheja Town Shop, Malad (East)
Mumbau 400 097. ...Applicant

Mr.F.Devitri, Sr. Counsel with
Mr.T.N.Tripathi for Applicant

Mr. Snehal Shah with Mr. R.C. Tolat i/b.
L.C. Tolat & Co. for Plaintiff

CORAM: SMT.R.S.DALVI,J.
DATED: 4TH JULY, 2005

P.C.

1. This application is made under Order 40 Rule 1 (2) and Section 151 of C.P.C. for claiming possession of the property in suit which was in the possession of the Court Receiver pending the suit from the Court Receiver, and/or from the Plaintiff.

2. This suit has been filed for recovery of Rs.60,000/- as the estimated deficiency shortfall for recovery of the plaintiff's dues from the defendants together with interest at 18% p.a. thereon. The incidental reliefs, in the suit which is for recovery of the aforesaid sum, are in respect of the shop which

came to be put in possession of the Court Receiver being shop No.11 in the suit plot of land where a new building has been constructed. These reliefs are for restraining the defendants from disposing of or parting with possession or creating third party right in the suit shop. The suit is also for compliance of the terms of M.O.U. executed between the plaintiff and the defendants on 6th November, 1989 Exhibit-D to the plaint.

3. The plaintiff applied for appointment of the Commissioner and later Court Receiver in respect of the suit shop No.11. Court Receiver came to be appointed pending the suit. The suit was not defended and has ended in Ex-parte decree. Under that decree the possession taken by the Court Receiver of shop No.11 was ordered to be returned to the Plaintiff.

4. This possession is stated to have been taken not from the defendants but from the applicant. Hence, the applicant has applied for being put back in possession since it was taken from him.

5. The applicant is stated to be the tenant of the defendants in the old structure on the plot of land where a new building has come to be constructed and in which Shop No.11 is agreed to have been given by way of permanent alternate accommodation to the applicant by the defendants. The applicant has relied

upon the agreement with his landlords, the defendants herein, dated 23rd January, 1991 for being given alternate accommodation, (Exhibit-A to the Notice of Motion), followed by a Deed of Confirmation dated 26th June, 1991, Exhibit-B to the Notice of Motion. The applicants claim to have been put in possession of Shop No.11 by the landlords, the defendants herein on 1st September, 1991 under a possession receipt, Exhibit-C to the Notice of Motion.

6. The plaintiff claims her right under the M.O.U. dated 6th November, 1989 Exhibit-D to the plaint. The M.O.U. is not registered. The defendant having never appeared to contest the suit, the admission of execution of the M.O.U. is not shown.

7. Under the M.O.U. dated 6th November, 1989 the plaintiff is stated to have given a loan of Rs.4 lacs to the defendants. The defendants are stated to have agreed to return Rs.10 lacs to the plaintiff within a period of one year from the date of execution of M.O.U. i.e. by 6th November, 1990, time being essence of the contract.

8. It can at once be seen that on the loan of Rs.4 lacs the additional amount of rupees six lacs is stated to be further lumpsum amount being Rs.6 lacs to be paid within a year. This constitutes return of the principal amount with interest at the rate of 150%

p.a.!

9. Further in the M.O.U. it is stated that the Power of Attorney has been executed by the defendants in respect of shop No.11 "in the project of the defendants" on the land described in the schedule to the printed agreement of sale which is referred to in the said M.O.U.

10. Under clause 6 of the M.O.U. the rights of the plaintiff upon the failure of payment by the defendants of the said sum of Rs.10 lacs or any part thereof within one year of the execution of that document has been set out. That right is when the unpaid amount would become automatically payable towards the purchase price of shop No.11 "being constructed" by the defendants and the same would be treated as payment towards the said shop.

11. Under clause 7 of the said M.O.U. the plaintiff would be entitled to convert the loan and accordingly be entitled to dispose of the said shop No.11 and realise the sum equivalent to Rs.10 lacs or the unpaid part thereof.

12. Under clause 9 of the said M.O.U. a printed copy of the agreement for sale for the said shop NO.11 and a Power of Attorney to be executed by the parties to the said M.O.U. along with the said M.O.U. was to

remain in escrow in the custody of the Solicitors of the parties to be handed over to the plaintiff if the defendants fail to pay the sum of Rs.10 lacs or any part thereof on or before 6th November, 1990.

13. Under clause 11 of the said M.O.U. if the plaintiff become entitled to exercise her right to sell the shop No.11 upon the defendants making any default in the repayment of Rs.10 lacs to the plaintiff on or before 6th November, 1990, the plaintiff become entitled to dispose of the said shop No.11 within 30 days of the documents kept in escrow being handed over to the plaintiff. It was further agreed under the said clause that if the amount of Rs.10 lacs or the balance unpaid part could not be realised by the plaintiff on or before 8th November, 1990 (just two days after the agreement became executable), then the plaintiff would be entitled to a further compensation of Rs.30,000/- per month from 6th November, 1990 till realisation. It may be stated that this amount would constitute a penal interest at the rate of 7.5% per month on the principal sum of Rs.4 lacs payable from 6th November, 1990 by the defendants for default.

14. The M.O.U. therefore creates right in the immovable property which becomes compulsorily registerable. It remained to be registered. The plaintiff has claimed her right precisely under M.O.U.

The plaintiff's rights are for certain unpaid amounts in the M.O.U. Neverthless, the suit is filed for a mere Rs.60,000/-. Para 8 of the plaint shows that the suit is filed for recovery of the amount of Rs.60,000/- with future interest thereon as the estimated deficiency shortfall as per particulars of the plaintiff's claim, Exhibit-G to the plaint. Exhibit-G to the plaint shows no particulars whatsoever. It shows only a grand total of Rs.60,000/- to begin with. It recites the words of prayer (a) itself.

15. The plaintiff has accordingly not shown what part of the amount of Rs.4 lacs taken as loan by the defendant remained unpaid which, as per her calculations came to Rs.60,000/- on the date of the suit. The plaintiff nevertheless claimed that short fall under clauses 1 and 2 of the M.O.U.

16. Further the plaintiff claims an interest in the immovable property sought to be secured under said M.O.U. itself being shop No.11. The plaintiff requires an injunction restraining any transfer of the said immovable property by the defendants and also an injunction restraining the defendants from interfering with, objecting or acting contrary to the terms in the M.O.U.

17. The plaintiff in essence claims a transfer of

the said shop to herself. The plaintiff would be entitled to the transfer under clause 7 of the M.O.U. since unregistered.

18. Upon the plaintiffs claim in the said immovable property to secure return of the unpaid amount of Rs.60,000/- the plaintiff initially applied for the appointment of the Court Commissioner so soon as the suit was filed on 7th December, 1991. The Court Commissioner thus appointed submitted his report on 12th December, 1991.

19. The report shows that the suit shop premises was locked. The plaintiff tried to unlock it and could not. The shop was shuttered with a painting "This shop is in possession of Shreechand Lunia", the applicant herein. The painting was seen to be fresh and was stated to have been done three days before, by the watchman.

20. The plaintiff applied for appointment of ad-interim receiver in respect of the said shop No.11. On 13th December, 1991 Court Receiver came to be appointed for the limited purpose of sealing the same, in this suit. The Court Receiver was directed that if at the time of sealing of the shop any person was found in possession he should record the name, address the duration of possession, the capacity of possession and appoint such person as his Agent. No person was

found in possession. The shop was found locked. Hence, none of those enquiries were made and no agent came to be appointed.

21. The Court Receiver submitted his report on 23rd December, 1999. The report shows that the premises was locked with two locks not belonging to the Plaintiff. There was no identification mark of the shop number. Because the plaintiff insisted on taking possession, it was taken at the insistence of the plaintiff. The Court Receiver put his official seals on the existing locks as well as affixed one sticker of possession board on the suit shop. The Court Receiver kept it thus at the risk of the plaintiff. The Court Receiver also mentioned about the painting on the shutter.

22. It is stated that since the shop was in the possession of the applicant and the applicant had allowed certain goods of some other party to be stored in the said shop No.11, both the parties applied for taking an inventory of that goods in the shop in Notice of Motion No.899 of 1992. The applicants in that Notice of Motion gave a list of the articles, that, according to them were in the sealed shop No.11. In the affidavit filed by the applicant herein (who was applicant No.1 therein) the applicant stated that he was an employee of one Blue Bird Company Limited which was a part of the Arya Group of Companies and

whose sister concern was M/s. Magna Products Pvt. Ltd; applicant no.2 in that Notice of Motion. Since the applicant was thus having relations with the said group the applicant had allowed and consented the use of this shop No.11 by the sister concern of his employers.

23. The Court Receiver was directed to open the shop and make an inventory of the articles. The Court Receiver submitted his report of making such inventory. The Court Receiver was directed to hand over articles to the applicants who claimed them.

24. On 18th April, 1992 the Court Receiver submitted his further report showing that the applicant herein handed over two keys of the said shop No.11 to the Court Receiver who removed his office seals, made a detailed inventory, relocked and resealed the said shop No.11 and got the confirmation of the inventory from the applicant herein and that the keys of the said shop No.11 was handed over to the Court Receiver’s Record Keeper for safe custody.

25. Needless to say that this was an act of obedience to the authority of the order of the Court by the applicant herein.

26. On 29th April, 1992 the Court Receiver was directed to hand over all the goods lying in shop

No.11 to the applicants. It was recorded in that order that the shop was opened with the keys of the applicant and that it was not the case of the Plaintiff that those articles were belonging to her.

27. After this initial exercise upon the filing of the suit nothing has been done by either of the parties to the suit or by the party from whom the possession was taken by the Court Receiver until the suit came to be decreed Ex-parte on 18th March, 1997. The Plaintiff obtained Decree in terms of prayer clauses (a), (b), (c) and (n) of the plaint. Further directions came to be passed to the Court Receiver who held the said shop No.11 in his custody pending the suit to handover possession of the said shop to the plaintiff.

28. The Applicant does not and cannot challenge the money decree passed in the suit against the defendants. The applicants have only sought to challenge the directions to the Court Receiver for handing over the possession of shop No.11 to the plaintiff.

29. Two questions come up for consideration under the aforesaid circumstances.

(a). The plaintiff who has sought to file a suit simplicitor for recovery of the amount, which is

valued as such, has also sought to execute the unregistered M.O.U. Though the particulars of the claim of the plaintiff in prayer (a) of the suit is as per the particulars of claim Exhibit-G to the plaint, particulars of the amounts due to the plaintiff as on the date of the suit is as per the particulars Exhibit-F to the plaint totalling to Rs.13.9 lacs. It shows the amount payable under clause I of the M.O.U. being Rs.10 lacs as on 6th November, 1990, a year from the execution of the M.O.U. as a principal amount left unrecovered and which is sought to be adjusted towards the price of shop No.11 which the plaintiff claims to be entitled to dispose of and sell under the terms of the M.O.U. In the suit therefore, the plaintiff claims right in immovable property which accrued to her under the said M.O.U. and a further amount of a sum of Rs.60,000/- to be recovered by the plaintiff. It is not known at what rate and on which date the property came to fetch a liquidated amount such as to leave the balance recoverable amount of Rs.60,000/- for which this suit came to be filed. The filing of the suit for Rs.60,000/-and its valuation at that rate would therefore, enable the plaintiff to recover not more than that amount with future interest as claimed by her. The plaintiff would not be entitled to claim any rights in any immovable properties under any unregistered agreement with the plaintiff. The claim of such right would necessitate the rejection of the plaint under Order 7 Rule 11 of

the C.P.C. Neverthless the plaintiff applied for and obtained interim orders of the appointment of Commissioner as well as Court Receiver for ascertaining the position of the immovable property under the M.O.U. for which the suit was not valued and for protecting that property by the Court under the umbrella of the Court Receiver.

(b). The suit property, if it is an immovable property, is required to be described under the provisions of Order 7 Rule 3 of the C.P.C. The plaint shows the description of the entire immovable property of the defendant being landlord together with structures of new City Survey numbers and C.T.S. numbers totally admeasuring 934.9 sq. mtrs. at Malad as in Exhibit-A to the plaint. Exhibit-A bears no reference or connection to Shop No.11, the property in dispute in the suit which could be described as the suit premises. Though it cannot be stated to be the suit premises since the suit is austensibly not filed for any relief in respect of that premises, Shop No.11 remains to be the property in dispute between the applicant and the plaintiff though not the suit property. There have been no rival contentions between the parties to the lis in respect of shop No.11.

31. In such a plaint, the Plaintiff has relied upon and annexed the original M.O.U. and also one

Power of Attorney.

32. The Power of Attorney executed on the same day between the plaintiff and the defendants, marked Exhibit-E to the plaint, shows power given by the defendants to the plaintiff for various other shops as well. Exhibit-E to the plaint shows shop Nos.24 and 25 struck off and corrected to read shop Nos.11 and 12. Page 3 of the said document shows an endorsement:-

> . "Mortgaged document for entire property shop Nos.11,12,,15,21 and 22." The Schedule annexed to the Power of Attorney Exhibit-E to the plaint is verbatim, the same as under Schedule showing the description of the suit property, Exhibit-A to the Plaint.

33. It is therefore, seen that there is much more than meets the eye between the plaintiff and the defendants. Aside from the five shop numbers mentioned in the aforesaid Power of Attorney the parties had certain dealings with regard to Shop Nos.24 and 25. All these are under unregistered documents. The defendants have not put up any challenge and hence their contentions cannot be seen.

34. Upon such an otherwise untanable claim the plaintiff obtained an Ex-parte decree which came to be

granted merely for want of any contest. Under such Ex-parte decree the Court Receiver has been discharged and the possession of the Shop No.11 has been ordered to be handed over to the Plaintiff.

35. The plaintiff claims to have been put in possession of the said shop No.11 under the M.O.U. The M.O.U. makes no mention of that fact. The Power of Attorney shows that shop No.11 interalia was "under construction". I have been told that the property shown in the Schedule to the Power of Attorney, which is the entire property of the Defendants came to be demolished and reconstructed and the plan for construction of the property of the defendants came to be sanctioned only on 26th September, 1990. Shop No.11 therefore, came to be constructed only after 26th September, 1990 and consequently its possession could not have been handed over to the plaintiff on 6th November, 1989 when the M.O.U. and the Power of Attorney were executed.

36. It may be mentioned that since the documents were agreed to be kept in escrow under clause 9 of the M.O.U. a letter dated 3rd November, 1991 came to be exchanged between the Solicitors of the parties which is a part of Exhibit-E to the plaint. The said letter also bears no mention of the possession of shop No.11 being handed over to the plaintiff. It could not have been.

37. The applicant on the other hand claims to be the tenant of the defendants. The premises of the defendants were to be demolished and reconstructed. The applicant as a tenant claims to have entered into an agreement with the defendants for being given permanent alternate accommodation in the newly constructed building on the defendant's plot of land wherein he had a tenanted premises. That agreement is stated to have been executed on 23rd January, 1991 Exhibit-A to this Notice Motion. The applicant claims that it is a registered document. The original document is not produced. The registration cannot be seen. The claim appears to be incorrect, since a Deed of Confirmation is stated to have been executed thereafter. The Deed of Confirmation is dated 26th June, 1991, exhibit-B to the Notice of Motion. Since the original Deed of Confirmation with the original agreement is not produced, its execution by both the parties cannot be seen. The computer print-out Exhibit-B does not show the execution by both the parties. The registration of the document is accordingly not shown.

38. The applicant has relied upon the letter of possession dated 1st September, 1991 Exhibit-C to the Notice of Motion. Under the said letter the defendants have handed over possession interalia of shop No.11 to the applicant by handing over the keys

of the shop to the applicant, though it is warned, that the completion certificate was not obtained.

39. The applicant claims to be in possession of shop No.11 since 1st September, 1991. The suit has been filed three months thereafter. The applicant admits to have painted his name on the shutter of the shop about three days prior to the filing of the suit consequent upon his possession thereon.

40. The applicant claims to have been effected by the order appointing Court Receiver and sealing the premises and hence, he claims to have made an application for return of the movables in the said shop which came to be returned to him upon the inventory being made by the Court Receiver.

41. The property remained in the possession of the Court Receiver duly sealed pending the suit. It was When the Ex-parte decree obtained by the plaintiff came to be executed by handing over possession to the plaintiff, that the applicant claims to be injured by the order of the Court, and has hence, made this application.

42. A simplicitor contention of the applicant is that since the possession was taken by the Court Receiver from the applicant by the applicant handing over the two keys of shop Nos.11 and 12 to the Court

Receiver as shown in his report dated 18th April, 1992, the possession should b handed over back to the applicant.

43. The plaintiff has challenged this aspect on the ground that the applicant was negligent and did not apply for vacating the order of appointment of the Court Receiver, or for being made agent of the Court Receiver, or filing any separate suit for enforcing his rights to the said shops in his possession. It is the contention of the plaintiff that such an application should have been made within a reasonable time and in any event within a period of limitation of three years from the date of the appointment of the Court Receiver. The plaintiff further contends that complicated questions of law and fact have arisen which cannot be determined in this Notice of Motion. It is further contended that such an application can be made only pending that suit under the Provisions of Order 40 Rule 1(2) of the C.P.C. Since the applicant did not take any steps pending the suit under the said provision he would be disentitled from taking with short course if the decree has been allowed to be passed in the suit. The plaintiff has further claimed that the application is barred by the principles analogous to resjudicata since the applicant also applied only for removal of his goods and also for return of the properties to him. It is therefore, contended that the applicant should be taken to have

given up his claim to that end.

44. Since the Court Receiver was appointed the property became custodia legis. The possession of the Court Receiver enures for the benefit of all the parties. It is only to protect the immovable property pending the suit. Third parties in possession from whom any property has been taken by the Court Receiver, as the applicant, have rights under Order 40 Rule 1(2) of the C.P. C. The applicant was in possession pf the said shop No.11 and the plaintiff did not have any right to remove the applicant from the possession and custody of shop No.11 pending the suit.

45. Besides, the plaintiff could never have claimed possession of the immovable property in the suit as filed. Such a claim could never be made since such a plaint would only liable for rejection. If the plaintiff desires to acquire any rights in the immovable property being shop No.11, the plaintiff must sue for declaration and possession of that shop. The plaintiff not having sued for such declaration during the period of limitation would be disentitled from suing or so claiming any right in the immovable property. The plaintiff would only be entitled to the return of the unpaid amount together with such compensation or penal interest as agreed between the parties, subject, ofcuourse to so suing.

46. The only question to be determined in this Notice of Motion is whether the applicant can be returned shop No.11 by the Court Receiver.

47. It has been held in the case of Anthony C. Leo Vs. Nadanlal Bal Krishnan & Ors. **reported in** (1996) 11 S.C.C. 376 **that the property taken by Court Receiver does not vest free from encumbrances- Rights and obligations of third party in respect of the property remain unaffected and receiver cannot interfere therewith.**

48. It is further observed in that judgment that since the Court becomes custodia legis of the properties in the suit in respect of which the Receiver is appointed, such de-jure possession does not vest the properties in the Court Receiver or in the Court free from encumbrances even pendente lite. It is further observed in that judgment that Court Receiver cannot interfere with the rights of third party since he does not possess any right of a party in possession under Order 40 Rule 1(2) of C.P.C. and no order of eviction can be passed at the instance of the Receiver without recourse to appropriate proceeding for the same. Consequently it is held that the Court has no jurisdiction to effect rights of third parties whose rights are protected under the Rent Act.

49. In that case it was alleged that the defendant was misusing the property by putting up certain locks and other unauthorised construction and using it for running a liquor bar. It was held that those contentions should not be decided in summary proceeding upon a report of the Court Receiver or a complaint by a party to the suit. The Court Receiver was therefore, directed to take separate legal action against the defendants for the alleged unauthorised structure and for running the suit premises as a permit room.

50. In the judgment in the case of P. Narayana Pillai Vs. S.Nagamoney of the Madras High Court **reported in** 1970 Madras Law Journal reports 161, **it has been held that the duty of the Court Receiver is to re-deliver possession to the party originally in possession irrespective of other rights.**

51. It was observed that this aspect must be dealt with on broad principles of justice relating to processual law. This was because the order of appointment of Court Receiver and putting the Plaintiff in possession thereupon was set aside. In such circumstances it would be the only duty of the Court to deliver back possession of the property to the party who was originally in possession.

52. It has been further held in that judgment that if the other party claims any independent right to recover possession of the property he should take separate steps in that regard and cannot take advantage of his possession as the erstwhile Court Receiver, to prevent re-delivery. Therefore, the plaintiff must separately sue the applicant or take further steps against the applicant if the plaintiff claims the said shop No.11 as per her rights under the M.O.U.

53. In that case the Respondent obtained physical possession of the property from the appellant by virtue of the orders appointing Court Receiver and putting him in possession and by virtue of the submission of the appellant to the authority and direction of Court. Consequently it was held that if ultimately the appeal was dismissed and the Court Receiver terminated, the appellant would have right to be reinstated and to receive back the possession which the appellant parted with in obedience to the authoritative direction of the Court.

54. Hence, it was observed that there could be no penalty imposed on a party arising from an act of obedience to the authority and the order of the Court. Citing the judgment in the case of Rodger Vs. Comptor D'Escompte De Paris by Justice Cairns **holding that**

. "It is one of the first and highest duties of all Courts to take care that the act of Court does no injury to any of the suitors, and when the expression 'the act of the Court' is used, it does not mean merely that act of the Primary Courts or of any intermediate Court of appeal, but the act of the Court as a whole, from the lowest Court which entertains jurisdiction over the matter upto the highest Court which finally disposes of the case"

55. It has been contended on behalf of the applicant that this application is in essence under Section 151 of C.P.C. and since it is not requiring the order prohibited by the C.P.C. the Court would have inherent power to grant the order of handing back possession which was taken from the applicant to the applicant.

56. In the Judgment in the case of Shipping Corporation of India Ltd. Vs. Machado Brothers reported in 2004 A.I.R. S.C.W. 1842 it has been held that such relief can be granted if not prohibited under any provision of C.P.C. Consequently in that case it was held that when the suit has become infructuous it could be dismissed after making necessary enquiry into the facts and circumstances under Section 151 of C.P.C. so soon as such facts are brought to the notice of the Court since there is no

such prohibitory bar under the C.P.C.

57. The plaintiff has relied upon the Judgment in the case of Shreedhar Chaudhury Vs. Nilmoni Chaudhury reported in A.I.R. 1925 Calcutta 681 in which it has been held that the Receiver's possession, which is deemed to be the possession of the Court, cannot be disturbed even by an ejectment under an adverse title and that the proper mode is for the party claiming an adverse interest to apply to the Court to be permitted to come in and be examined prointersse suo. That was ofcourse a claim based fully on title. In this case the applicant claims to be returned the property taken by the Court Receiver since it was taken from him.

58. The real test in determining the bonafides of the plaintiff's claim in the suit is that if the suit was decreed after contest, possession of the property for which the Court Receiver was appointed could not have been given to the plaintiff since the suit is simplicitor the monetory claim. In that case also possession would have to be returned to the applicant. It therefore, matters little whether the applicant submits to the Authority and the order of the Court pending the suit and applies only for removing certain articles from the premises of which control and custody was taken over by the Court Receiver until the decree. The suit was filed on 7th December, 1991. The respondent was directed to be handed over the

goods lying in shop No.11 on 29th April, 1992. It was decreed Ex-parte on 18th March, 1997. During about 5 years period from the time the applicant was handed over the goods and the Decree was passed, the applicant did not apply for being given back the suit premises. However, had the suit not been decreed Ex-parte, it would have been expected to remain pending for many more years. The applicant could have made an application under Order 40 Rule 1(2) of the C.P.C. during that time. Consequently simply because such an application was not made until the suit was decreed, the applicant's interest in the suit property and the consequent legal right thereto cannot be altered.

59. The fundamental principle of the effect of appointment of the Court Receiver specifically shown in Kerr on Receivers, sixteenth edition, page 121 is that it cannot effect any change in the possession of land or an estate in the land or a charge in favour of the Receiver or the person obtaining the appointment of the Receiver. The appointment of Court Receiver cannot effect the right to the property over which he is appointed. Therefore, when the lis between the parties comes to an end, the Court Receiver must hand over possession to the party from whom he took that possession to protect and preserve the property and prevent its waste, unless in the lis between the parties, the determination of the legal right of

either party is made.

60. Consequently a Receiver is only a custodian of the property of which he takes possession. The title remains with the party who has it and is no way effected or vested in the Receiver. The fact of his appointment as stated in Woodroffe's Law relating to Receivers at page 66 in the 7th Edition of the year 2000 **is :**

> **. " The possession of the Court by its Receiver is the possession of all parties to the suit according to their titles : his appointment is not for the benefit of the plaintiff merely but for all other persons who may establish rights in the cause. He is not the particular agent of any party but an officer of the Court. With regard to the limitations in his title, it is to be observed that his possession is subject to all valid and existing liens upon the property at the time of his appointment and does not divest a lien previously acquired in good faith. The rights of the parties to an action are not interfered with by the appointment. It is not adverse to either party."**

. Hence, the appointment of Court Receiver, only operates to change the possession from that of a

private party to the Officer of the Court. It has no effect upon the title to the property of that party and it by itself does not determine any right as between the parties. Consequently it has been held in the case of Dinyar Rustom Patell Vs. Rustom J.R. Patell reported in 1986(2) B.C.R.222, B.R.C. 380 = 1981(2) B.C.R. 222 at page 240:-

> . **"By an order of the appointment of the Court Receiver itself, the plaintiff does not get its possession of any party."**

It is held therein that the Receiver acts on behalf of the legitimate owner of the suit premises.

61. Consequently who is the legitimate owner would have to be determined before handing over possesion of Shop No.11 to the plaintiff, who has claimed juridicel possession pursuant to the M.O.U. Exhibit-D to the plaint. The claim of the plaintiff that the property was owned by the defendants and accordingly agreed to be charged in favour of the plaintiff as per the M.O.U. would have to be determined in the suit filed by the Plaintiff claiming the said property. This is not one such suit. Hence, the applicant's claim is that he was the defendant's tenant in the old construction and was given permanent alternate accommodation of shop No.11 (which was under construction at the time of the execution of the

M.O.U.) and consequently he handed over possession to the Court Receiver. The applicant must therefore be returned that possession, Until the Plaintiff files a suit to claiming his juridicial possession the plaintiff cannot be given the property that was not in his actual possession at the time of the filing of the suit by the Receiver simplicitor handing over that possession to the plaintiff upon his discharge.

62. The plaintiff would therefore, be required to sue the applicant upon claiming interest in the property for which the Court Receiver was appointed. The plaintiff would be entitled to its possession upon showing his superior right in respect of that property. Until that is done the property for which the Court Receiver was appointed for shop No.11 (and which is not in essence the suit property) must be handed over to the applicant by the Court Receiver. Hence, the following order.

O R D E R

. The Court Receiver shall handover possession of shop No.11 to the applicant.

. The decree dated 18th March, 1997 passed in this suit is modified to that extent.

. This order is stayed for three weeks.

. **No order as to costs.**

(SMT.R.S.DALVI,J.)